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11/397,025	03/31/2006	Gary H. Cox	EMS-108US2	3300

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY H. COX, BRETT A. QUINN,
and DOUGLAS E. LECRONE

Appeal 2011-001893
Application 11/397,025
Technology Center 2100

Before ROBERT E. NAPPI, CAROLYN D. THOMAS, and
BARBARA A. PARVIS, *Administrative Patent Judges*.

PARVIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 3-7, 10-14, and 21-32. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1, 2, 8, 9, and 15-20 have been cancelled. We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention relates to transferring data between storage devices. Spec. p. 1, ll. 5-6.

Claim 21 is illustrative:

> 21. A method of handling failure of a primary group at a first data center that is part of plurality of data centers providing triangular asynchronous replication, the method comprising:
>
> creating a data mirroring relationship between at least one storage volume at a second data center having a synchronous backup group that is part of the plurality of data centers and at least one storage volume at a third data center having an asynchronous backup group that is part of the plurality of data centers, wherein data writes to a local storage volume at the primary group begun after a first time and before a second time are associated with a first chunk of data and data writes to the local storage volume at the primary group begun after the second time are associated with a second chunk of data and wherein the at least one storage volume at the third data center stores data from the first chunk in response to receipt of a message from the primary group indicating that all data from the first chunk has been transmitted to the third data center;
>
> maintaining failure recovery data that indicates data of the first and second chunks of data that has not yet been completely transferred to the third data center;
>
> synchronizing the second and third data centers, wherein the failure recovery data indicates whether to synchronize the second and third data centers by providing initial data from the second data center to the third data center or by providing initial data from the third data center to the second data center; and
>
> after synchronizing the second and third data centers, resuming work at one of: the second data center and the third data center.

EVIDENCE CONSIDERED

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Suzuki	U.S. 2006/0047664 A1	Mar. 2, 2006
Meiri	U.S. 2004/0193820 A1	Sept. 30, 2004
Nakamura	EP 1 283 469 A2	Dec. 2, 2003

REJECTIONS

Claims 4, 5, 7, 11, 12, 14, 21-27, 29, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki and Meiri. Ans. 3-9.

Claims 3, 6, 10, 13, 28, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, Meiri, and Nakamura. Ans. 3, 9-12.

ISSUE

Did the Examiner err in finding that Suzuki teaches "failure recovery data," as recited in independent claim 21, and similarly recited in independent claim 24?

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' contentions in the Appeal Brief presented in response to the Final Office Action and the Reply Brief presented in response to the Examiner's Answer. We disagree with Appellants' conclusions.

We are not persuaded by Appellants' arguments that Suzuki is very different from Appellants' recited feature of synchronizing the second and third data centers "using the newest data between them" based on the failure

recovery data. App. Br. 13. Appellants' argument is not commensurate with the scope of the claim 21. Claim 21 recites "the failure recovery data indicates whether to synchronize the second and the third data centers by providing initial data from the second data center to the third data center or by providing initial data from the third data center to the second data center." We agree with the Examiner's finding that the disputed limitation would be obvious to one of ordinary skill in the art in view of the teachings of Suzuki (Ans. 4-5 (citing Suzuki ¶¶ 280, 290, 293: Figs. 23, 25); Ans. 12-13 (citing Suzuki ¶ 293)).

Thus, Appellants have not persuaded us of error in the Examiner's rejection of independent claims 21 and 24 under 35 U.S.C. § 103(a), and dependent claims 4, 5, 7, 11, 12, 14, 22, 23, 25-27, 29, 30, and 32, not separately argued (App. Br. 10, 15). Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claims 4, 5, 7, 11, 12, 14, 21-27, 29, 30, and 32 as being unpatentable over Suzuki and Meiri.

With respect to claims 3, 6, 10, 13, 28, and 31, Appellants argue that Nakamura does not overcome the deficiencies of Suzuki and Meiri (App. Br. 14). For the reasons discussed *supra*, Appellants have not persuaded us of error in the Examiner's rejection of claims 3, 6, 10, 13, 28, and 31. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claims 3, 6, 10, 13, 28, and 31 as being unpatentable over Suzuki, Meiri, and Nakamura.

DECISION

We affirm the Examiner's rejection of claims 3-7, 10-14, and 21-32 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc